



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

NOV 17 2016

Mr. Randy R. Casey, Director
Division of Mined Land Reclamation
Commonwealth of Virginia
Department of Mines, Minerals and Energy
P.O. Drawer 900
Big Stone Gap, VA 24219

Re: NPDES Permit No.VA0081401
Red River Coal Company – North Fox Gap Surface Mine
South Fork Pound Watershed, Wise County, VA
EPA Receipt Date: October 30, 2015, April 11, 2016

Dear Mr. Casey:

This letter is a follow up to our August 30, 2016 conference call concerning the reissuance of the NPDES permit for Red River Coal Company – North Fox Gap Surface Mine on August 5, 2016. As was indicated during the call, the draft permit for discharges from this facility remains subject to the U.S. Environmental Protection Agency (EPA) specific objection pursuant to Section 402(d) of the Clean Water Act (CWA), 33 U.S.C. § 1342(d), its implementing regulations at 40 C.F.R. § 122.4(c) & 122.44, and the process described in the Memoranda of Agreement addressing implementation of the National Pollutant Discharge Elimination System (NPDES) program in Virginia. EPA's January 28, 2016 specific objection letter states that the final NPDES permit may not be issued until the process described in CWA Section 402(d), 40 C.F.R. § 123.44 and the Memoranda of Agreement is completed. Since that process is not yet completed, it is EPA's view that the NPDES permit apparently issued by your office on August 5, 2016 is not a validly issued NPDES permit.

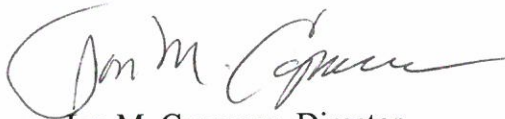
On our January 28, 2016 specific objection to the Red River Coal Company NPDES permit EPA raised the following issues:

- Pursuant with 40 C.F.R. § 122.44(d) (1) (vii) (B), the permit needs to be revised to include Total Dissolved Solids (TDS) water quality based effluent limits (WQBELs) at the original outfall locations consistent with the assumptions and requirements of the waste load allocation (WLA) assigned to this facility.
 - In your April 8, 2016 response to our specific objection you did not provide information concerning the four original outfall locations or the total dissolved solids (TDS) and total suspended solids (TSS) discharges from the four original outfall locations, nor did the response agree to include WQBELs for these parameters.

- The permit needs to be revised to regulate the discharges from the original outfalls under the NPDES permit. Since the addition of TDS and TSS from the original outfall locations is not zero, the WLAs for TSS and TDS assigned to those outfalls cannot be reassigned to a new or different outfall.
 - VA DMME indicated in its response that no “constructed” discharges or siltation structures exist at the original discharge locations. This response does not fully address whether these locations continue to contribute loads of TDS or TSS to the watershed. As stated in our specific objection letter, if these locations continue to contribute loads of TDS or TSS to the watershed, the allocations to these locations cannot be reassigned. To the extent there are post-bond release discharges, then those must be regulated through an NPDES permit under sections 301(a) and 402 of the CWA.
- Require effluent characterization of the original outfall locations consistent with the requirements 40 C.F.R. § 122.21(g).
 - In your April 8, 2016 response you indicated that no “constructed” discharges or siltation structures exist at the original discharge locations but water quality information representative of those locations is required, including routine benthic macroinvertebrate surveys and testing of 39 water quality parameters, including all the metals analyses typically of mine effluent characterization. We acknowledge that the permit includes these requirements; however, because the NPDES application submitted by the permittee did not include the effluent characterization for the existing outfall locations, the application lacked sufficient information regarding discharges from the existing locations. As stated in our specific objection letter, if there are post-bond release point source discharges, then those must be regulated through an NPDES permit under sections 301(a) and 402 of the CWA.

In light of the foregoing, the process described in CWA Section 402(d), 40 C.F.R. § 123.44 and the Memoranda of Agreement as to our January 28, 2016 objection is not completed. If you have any questions, please feel free to contact me or Brian Trulear at (215) 814-5723.

Sincerely,



Jon M. Capacasa, Director
Water Protection Division

cc: James M. Thomas, Red River Coal Company, Inc.

